

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

CR 04-PT-199-S

**MCWANE, INC., JAMES DELK, MICHAEL
DEVINE and CHARLES "BARRY" ROBISON,**

Defendants.

MEMORANDUM OPINION

This cause comes on to be heard on the defendants' objections to the magistrate judge's ruling filed on July 25, 2005.

The Government's primary positions are:

(1) The "Power Points" displays were not objected to by the defendants and they should not now be allowed to raise such objections.

(2) The "Power Points" displays are not part of the record except to the extent that the exhibits were admitted and the oral arguments recorded.

The court concludes that it will, after an in camera examination, allow the defendants to have copies of the "Power Points" displays. There is no dispute that the displays were used in final arguments. To the extent that the display exhibits have been admitted, the duplication has no real significance. The same can be said for any language which was used in the displays which is repeated in the transcribed oral arguments. The court has not compared the displays to the oral arguments to determine what portions were repeated.

The court's allowing the defendants to have copies of the displays does not, in any way,

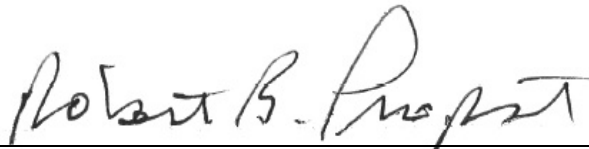
suggest that:

- (1) The defendants can have a delayed objection thereto, having not initially objected.
- (2) There is any basis for any objection.
- (3) There is any plain error.

The court repeatedly told the jurors that what the attorneys say is not evidence and that they should rely on their own individual and collective memories. All the defense attorneys had an opportunity to object to and/or rebut the arguments.

If the court does not allow the defendants to have copies of the displays the only significance might be that an appellate court might require that the matter be reconsidered. Common sense dictates that the court require the providing of the displays. The Government can still make the same arguments as it has made in opposing the court's allowing the defendants to have copies. The allowance does not change any arguments relating to appropriateness of objections or waiver thereof.

This the 9th day of August, 2005.

A handwritten signature in black ink, reading "Robert B. Propst", written over a horizontal line.

ROBERT B. PROPST
SENIOR UNITED STATES DISTRICT JUDGE